

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

In re Competitive Market Issues Inquiry (Phase II))))))	DTE No. 01-54
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**INITIAL COMMENTS OF THE MASSACHUSETTS CHAPTER OF THE
NATIONAL ASSOCIATION OF INDUSTRIAL AND OFFICE PROPERTIES**

Pursuant to the Hearing Officer's order dated December 11, 2001, the Massachusetts Chapter of the National Association of Industrial and Office Properties ("NAIOP") submits the following initial comments in Phase II of the Department's Competitive Market Issues Inquiry.

1. NAIOP is an advocacy, research and educational organization that represents the interests of companies that are involved with the development, ownership, management and financing of commercial properties. NAIOP has over 600 members in the Commonwealth, representing nearly 310 companies that own or manage over 100 million square feet of office, research-and-development, and industrial space. Founded in 1967, NAIOP's 9,500 national members are involved in the development and management of industrial, office and retail properties throughout the United States and Canada.

2. NAIOP's members have three interests in Phase II of this proceeding:

- ?? Promoting efforts that will yield lower electricity prices (as well as opposing initiatives that will increase such prices);
- ?? Protecting a customer's right under the Restructuring Act to select his or her electricity supplier; and
- ?? Protecting the customer's proprietary interest in information relating to his or her electricity use.

These interests inform NAIOP's specific responses to each of the questions posed in the Hearing Officer's December 11, 2001 memorandum.

3. **Distribution Companies as Electricity Brokers.** Those who propose forcing distribution companies to move their default-service customers into the hands of competitive suppliers (whether they are moved by auction, random assignment or some other method) have yet to show that, on the whole, consumers would pay less for electricity under such a system. It is likely that no such proof exists. Even if the proponents could offer proof, Massachusetts' experience with long-term, government-supervised forecasts of power costs demonstrates that such predictions often are wrong.

The Restructuring Act presupposes that distribution companies and the government should, in the long term, get out of the business of choosing suppliers for electricity customers. The burden should be on competitive suppliers to make the case to consumers for switching to competitive supply. Forced choices are no choices.

If the Department nevertheless concludes that distribution companies should act as electricity brokers for default-service customers, the Department should do so only in a manner that (a) results in the least cost to consumers; (b) protects customer choice; and (c) protects customer information. To these ends, NAIOP proposes that the Department take the following steps:

- A. The costs of distribution-company brokerage activities should not be rolled into default-service rates, or any other rate. Such activities will benefit primarily those licensed competitive suppliers who will gain customers through the brokerage program. Those suppliers should bear the program's costs.
- B. To put distribution companies on the same playing field with licensed electricity brokers, see 220 CMR 11.05(4)(b)(2), distribution companies should be required to obtain a customer's consent before "enrolling" the customer in a distribution-

company brokerage effort, and obtain a second consent before transferring the customer to a licensed competitive supplier. Alternatively, default-service customers should be allowed to “opt out” of any mandatory brokerage system ordered by the Department.

- C. Customers who are forced to participate in distribution-company brokerage programs should not be treated differently from other customers with respect to third-party disclosure of customer information.

4. **Customer Enrollment.** The Department should not order mandatory disclosure of customer account numbers on Customer Information Lists. Existing protections against unauthorized enrollments would be compromised if account numbers were included on Customer Information Lists.

5. **Customer Information List Issues.** NAIOP is not opposed to disclosure of information concerning customer service delivery points. NAIOP opposes, however, any effort to require distribution companies to disclose the identities of those customers who receive generation service from competitive suppliers. A customer’s choice of competitive supplier can have commercial importance. Both the Restructuring Act and a previously existing statute, M.G.L. c.25, § 5D (trade secrets, confidential, competitively sensitive or other proprietary information), protect against involuntary disclosure of such information. Moreover, disclosure of such information will not reduce the numbers of standard-offer or default-service customers in the Commonwealth. Instead, disclosure of such information (particularly at this time) likely will lead competitive suppliers to “cherry pick,” and direct their marketing efforts towards those sophisticated customers who have chosen competitive supply. It is likely that such efforts will come at the expense of efforts directed at the larger default-service and standard-offer markets.

Respectfully submitted,

MASSACHUSETTS CHAPTER OF THE
NATIONAL ASSOCIATION OF INDUSTRIAL
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